IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE TWENTY FIFTH DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

And
THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION NO : 4754 of 2000

Between:

L. Sharman, S/o Ram Naik,
R/o Kalamadugu Village & Post, Jannaram Mandal
Adilabad District.

..... PETITIONER

AND

The Government of Andhra Pradesh, rep. by its Secretary
Revenue Department, Secretariat, Hyderabad.

.....RESPONDENT

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to call for the records relating to the order in O.A.No.486/97, Dt.26/7/1999 on the file of the Hon'ble A.P. Administrative Tribunal at Hyderabad and records relating to the G.O.Ms.No.58, Revenue (Ser.I) Dept., Dt.27/1/1997 from the office of the respondent herein and set aside the same by issuing a Writ or direction more particularly *Writ of Certiorari* declaring the same as arbitrary, illegal and contrary to the principles of natural justice.

Counsel for the Petitioner: MR.A.ABHISHEK REDDY

Counsel for the Respondent: GP FOR SERVICES II

The Court made the following:

ORDER: (Per Hon'ble Sri Justice G. Bikshapathy)

The Writ petition is filed, assailing the order passed by the Tribunal in O.A.No.486 of 1997 dated 26.07.1999.

2. The petitioner was applicant before the Tribunal. He filed O.A.No.486 of 1997 challenging the order passed by the Government in G.O.Ms.No.58, Revenue (Ser.I) Department, dated 27.10.1997, terminating the probation of the petitioner under Rule 26 (a)(ii) of A.P. State Subordinate Services Rules.

3. It is the case of the petitioner that prior to the appointment, he worked as Inspector of Central Excise & Customs and after getting selection, he resigned the post and joined as Deputy Collector (Category-II) on 02.03.1995 after giving extension of joining time by the Government. Thereafter, he completed training at Karimnagar and posted as Revenue Divisional Officer, Nagarkurnool in full additional charge of the said post on 26.06.1996. While he was functioning as such, the impugned G.O. was issued by the Government and the G.O. came to be challenged by the petitioner before the Tribunal alleging that the order is illegal and unwarranted and that the order of termination of probation was in fact amounts to attacking stigma to the services of the petitioner and without giving an opportunity and conducting enquiry the order could not have been passed by the Government, therefore, the order is liable to be set aside. The learned Tribunal, after considering the matter, dismissed the said O.A. by an order dated 26.07.1999. Against the said order, the writ petition has been filed.

4. The learned counsel appearing for the petitioner raised two substantial issues before this Court. Firstly, the Government have no jurisdiction to pass the order on the date when the order came to be passed viz., 27.01.1997. The A.P. State Subordinate and Services Rules, 1962 was repealed and A.P. State Subordinate and Services Rules, 1996 came into force. Under the said Rules, there is no provision for termination of probation and therefore, the power exercised by the Government under Rule 26 (a)(ii) is non-existing power and therefore the order lacks jurisdiction.

5. Secondly, the learned counsel for the petitioner would submit that the order is not sustainable inasmuch as it was passed as a measure of punishment without giving proper opportunity. When the misconduct is the foundation for termination of probation in fact it is incumbent on the part of the authorities to conduct enquiry and pass appropriate orders. Therefore, on both these grounds, the order is not sustainable.

6. The learned Government Pleader for Services II submits that when the order was passed on 27.01.1997 new rules came into force and therefore, it is only a technical omission and it will not go to upset the order already passed. He further submits that similar rules already had existed in the revised rules and therefore, in fact it would not make any difference while terminating the probation.

7. Though the contention appears to be appealing, but on a thorough scrutiny we are unable to accept the proposition sought to be laid down by the learned Government Pleader. As on 27.01.1997 A.P. State Subordinate & Service Rules 1996 came into force and in fact G.O. was issued as early as 15.06.1996 and the said rules were published in the Gazette on 27.10.1997, and therefore it shall be deemed that the rules came into force by 27.01.1997. Under those circumstances, the Government is only bound to exercise the power under Rules 1996 and not pre-amended rules. Any action taken under Rules, 1962 would be nothing but acting on an invalid or ineffective Rules. Under these circumstances, we find that the order of termination is not sustainable in law as the Government lacks jurisdiction to invoke the old Rules. On this ground, without going into the other grounds raised, we are inclined to allow the writ petition.

9. Accordingly, the writ petition is allowed and the order of termination issued by the Government is set aside and the petitioner shall be deemed to be continued in service with all attendant benefits, as if there was no order of termination. No costs.

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(G. BIKSHAPATHY, J)

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(P.S. NARAYANA, J)

Date: 25.02.2005

Ksn

..... REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1. The Secretary, Government of Andhra Pradesh,

Revenue Department, Secretariat, Hyderabad.

2. Two C. Cs to G.P. for Services II, High Court Buildings, Hyderabad (OUT).

3. 2 CD copies

4. 1 CC to MS.PULLA REDDY & ABHISHEK REDDY

*Form-NIC-OGS/WP{**RAGHU**}*